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IN THE

Supreme Court of the United States.

October Term, 1971

No. 71-956

AL WHITE, a minor, by his father, V. T. WHITE,

Petitioner,

VS.

BOARD OF EDUCATION OF HOBBS MUNICIPAL SCHOOL DISTRICT NO. 16, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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OPINIONS DELIVERED IN COURTS BELOW

The opinion of the United States District Court for New Mexico and the consolidated opinion of the United States Court of Appeals for the Tenth Circuit involving this case and others are contained in the Appendix to the Petition for a Writ of Certiorari.

QUESTION PRESENTED

The question as stated in the petition is framed too narrowly to fit our fact situation.

Under circumstances in a public school where the wearing of long hair by male students causes disruptions

and distractions that interfere with the teaching-learning process, may a state constitutionally, promulgate and enforce a rule to limit the length of male students' hair?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Supplementing the constitutional and statutory provisions set forth in the petition, attention is called to the following:

Article XII, Section 5, Constitution of New Mexico:

> "Every child of school age and of sufficient physical and mental ability shall be required to attend a public or other school..."

Section 77-10-2, N.M.S.A., 1953, Annotated:

> "Any person attaining six (6) years of age prior to January 1 of a school year and until attaining seventeen (17) years of age shall attend a public school, a private school...or a school offered by a state institution..."

Section 77-4-2, N.M.S.A., 1953, Annotated:

> "A local school board shall have the following powers or duties:
>
> "A. subject to the regulations of the State Board, supervise and control all public schools within the school district...
>
> "N. adopt regulations pertaining to the administration of all powers or duties of the local school board;..."

STATEMENT OF THE CASE

Additional facts should be brought out that are not stated in the petition. Numerous instances of friction

between students, disruptions, distractions of the students and teachers, violence and incidents bordering on violence were testified to by three administrators, twelve teachers and seven students for a total of twenty-two people from the school system. Teachers and school administrators with more than three hundred fifteen years of total experience testified that, in their opinion, long hair caused distractions and had an adverse influence on the teaching-learning process.

Although the Hobbs High School code made reference to neat and trim "conventional style haircuts," the more specific terms were announced at the beginning of each year, the teachers were instructed to review the code in their first classes of the year, and the code was reviewed at various times during the year over the intercom. The evidence leaves no doubt but that White knew of the specific rules and that the rules were uniformly enforced.

ARGUMENT

I. REASONABLE RESTRAINTS ON STUDENTS' LIBERTY ARE NECESSARY.

"The constitutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of anarchy." *Cox v. Louisiana*, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed.2d 471, 484 (1965). Judge Learned Hand in an address, the *Spirit of Liberty*, p. 189, expressed the view that freedom is not to do as one likes. It is not the ruthless, the unbridled will:

> "A society in which men recognize no check on their freedom soon becomes a society where freedom is a possession of only a savage few; as we have learned to our sorrow."

This Court has held that school officials must have comprehensive authority to control conduct in the schools. *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d

731, 738 (1969); *Epperson v. Arkansas*, 393 U.S. 97, 104, 89 S.Ct. 266, 270, 21 L.Ed.2d 228, 234 (1968).

Petitioners allude to several instances in history wherein leaders or governments have found it necessary or expedient to regulate the length and style of hair. However, no effort was made to show that the circumstances prevailing in each instance did not reasonably justify the action taken in the interest of an overriding public need.

Peter the Great was mentioned. In his attempt to recognize the requirements of the Russian Nation and fulfill his own obligations as a ruler, he was confronted with cumbrous, antiquated and worn-out machinery of government and took drastic steps to force westernization of his nation, including running "foul of the long beards and oriental costumes which symbolized the arch conservatism of Old Russia." 17 *Encyclopedia Britannica* 637,638.

Peter had seen the results of unrestrained liberty. Before he was ten "he saw one of his uncles dragged from the palace and butchered by a savage mob. He saw his mother's beloved mentor and his own best friend,... dragged bruised and bleeding, from his retaining grasp and hacked to pieces." (p. 637)

Petitioners' literal position is that the state cannot regulate in any manner the appearance or dress of any student and that any restraint in this regard unconstitutionally infringes upon his freedom, no matter what distractions, disruptions or violence it causes in the classroom for the other students and the teacher. To hold that the state cannot make a simple rule to prevent extremes in appearance that disrupt the education of its children is to say that the state can make no regulations that interfere in any degree with the personal freedoms of the individual student. If the "haircut rule" is an unconstitutional restraint on the student's freedom, a much better argument could be made that virtually imprisoning the child for a good part of his time for twelve years, forcing him to read books, prepare lessons and take examinations are much more severe encroachments upon his liberty. Following petitioners' logic, these restraints should also fall.

It is true, as petitioners allege (Pet. 11), that a number of the courts have looked upon long hair as a symbol of dissent and defiance of authority. However, there is no substance to petitioners' argument that the school authorities have attempted to regulate long hair merely because it represents an attitude of dissent. (Pet. 11) Most all of the cases that have held for the school authorities have found that the facts showed that wearing of extremely long hair by male students adversely affected the ability of the schools to educate their children, and that it interfered with the teaching-learning process.

The characterization of these rules as "state-imposed uniformity of appearance" by petitioners is not accurate. The schools' rules do not tell male students a given way to wear their hair. There is considerable leeway between a shaved head and hair that does not extend below the collar at the back, the eyes in front and over the ears on the sides. The proscription is against extreme hair styles that interfere with the student's own education and that distract other students from their courses of study.

Refusal of local school boards and administrators to throw the schools open to immature children from six to eighteen years of age with no restrictions at all as to their personal appearance, their state of dress or undress, cannot reasonably be said to be inimical to our constitutional traditions.

II. THE STATES, NOT THE FEDERAL COURTS, SHOULD RUN THE PUBLIC SCHOOLS.

What lies ahead for the courts, if petitioners prevail, is appalling. One court that favors the doctrine of *Breen v. Kahl*, 296 F.Supp. 702 (W.D. Wisc.) aff'd 419 F.2d 1034 (CA 7, 1969), *cert. denied*, 398 U.S. 937 (1970), was dubious about the "pat statement" in that case to the effect that there should be no fear of "opening flood gates to litigation" and was "overwhelmed by the possibilities of trying cases involving the in-school rights of third-graders to dress or wear their hair in a manner contrary to their schools' rules, or the determination of the limits upon the First Amendment rights of a

fifth-grader." *Parker v. Fry*, 323 F.Supp. 728 (E.D. Ark., 1970).

The state and local authorities should control the public schools; and the courts should not intervene in the daily operation of the schools unless conflicts "directly and sharply implicate basic constitutional values." *Epperson*, supra. Maintaining an effective and efficient school system is of "paramount importance." *Ferrell v. Dallas Independent School District*, 392 F.2d 697 (CA 5, 1968), *cert. denied*, 393 U.S. 859 (1968). The citizens are "outraged if the schools are less than safe or orderly." (Judge Godbold, concurring specially in *Ferrell*) If public school students from kindergarten through high school can "defy and flout orders of school officials to keep their minds on their school work, it is the beginning of a new revolutionary era of permissiveness in this country fostered by the judiciary." (Justice Black dissenting in *Tinker*)

In *Karr v. Schmidt*, 401 U.S. 1201, 91 S.Ct. 592, 27 L.Ed.2d 797 (1971), Justice Black, sitting as Circuit Justice, refused to vacate a stay of injunction pending the appeal of the case and had some strong statements to make regarding the idea of imposing on the United States Courts the burden of "supervising the length of hair that public school students should wear."

The local officials are keenly aware of the multitude of factors which may or may not affect the educational process. They are aware of the standards of conduct and behavior in the community where the school is located and which "may affect the way in which 'long hairs' will be accepted by their peers." *Jeffers v. Yuba City Unified School District*, 319 F.Supp. 368 (E.D. Cal., 1970); *Livingston v. Swanquist*, 314 F.Supp. 1 (N.D. Ill., 1970). Court interference could dilute the authority of the educational system and undermine the effectiveness of the teacher. "We have become a great nation because of the genius of the American educational system. Judicial interference...could sound the death knell of this system..." *Gfell v. Rickelman*, 313 F.Supp. 364 (N.D. Ohio, 1970), aff'd. 441 F.2d 444 (CA 6, 1971).

Education has been recognized by this Court as perhaps the most important function of state and local

governments. It is the foundation of good citizenship and is a "principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment." *Brown v. Board of Education of Topeka*, 347 U.S. 483, 493, 74 S.Ct. 686, 98 L.Ed. 873 (1954); *Sims v. Board of Education of Independent School District No. 22*, 329 F.Supp. 678 (D.N.M., 1971).

III. THE RIGHTS OF CHILDREN TO RELY ON CONSTITUTIONAL SAFEGUARDS ARE NOT THE SAME AS ADULTS.

Petitioners gave examples of historical restrictions on the length of hair and appearance that have applied to adults and cited cases proscribing discrimination against adults because of their appearance. (Petitioners' Brief, p. 10, 11, n. 5) The situations were not analogous to ours.

A child, "like someone in a captive audience," does not have the same capacity for individual choice under the constitutional guarantees as an adult. Justice Stewart, concurring in the result in *Ginsberg v. New York*, 390 U.S. 629, 88 S.Ct. 1274, 20 L.Ed.2d 195, 209 (1968), expressed this opinion and ruled that a state may deprive children of other rights, the right to marry, the right to vote, which deprivations would be constitutionally intolerable for adults. *Tinker*, supra, 515; *Prince v. Commonwealth of Massachusetts*, 321 U.S. 158, 170, 64 S.Ct. 438, 88 L.Ed. 645, 654 (1944); *Cordova v. Chonko*, 315 F.Supp. 953 (1970), Justice Black's dissent in *Tinker*, supra, 747.

The practical difference is that an adult, upon seeing petitioner White on the street, would have the option to walk away. In the classroom dozens of other students who may be repulsed by his appearance are compelled by §77-10-2, N.M.S.A., 1953, to remain in the classroom with him.

IV. PETITIONER HAS NO RIGHT UNDER THE CONSTITUTION TO WEAR HIS HAIR AT ANY LENGTH HE CHOOSES.

White wanted to wear his hair long because he liked the way it looked. He made no claim that it was symbolic of any social, political or religious attitudes. Most of the Courts have denied First Amendment protection on fact situations like this. The Circuit Court in our case believed that *Tinker*, supra, eliminated hair style from any impact of that decision by stating specifically that "The problem posed...does not relate to...hair style..." Our Circuit Court further found that the wearing of long hair is not akin to pure speech:

The right of a student to determine his own hair length is not a matter of substantive due process. *Ferrell*, supra; *Gfell*, supra; *King v. Saddleback Junior College*, 445 F.2d 932 (CA 9, 1971), *cert. denied*, 40 U.S.L.W. 3249, 30 L.Ed.2d 294; *Jackson v. Dorrier*, 424 F.2d 213 (CA 6, 1970), *cert. denied*, 400 U.S. 850, 27 L.Ed.2d 88; *Stevenson v. Board of Education of Wheeler County*, 426 F.2d 1154 (CA 5, 1970), *cert. denied*, 400 U.S. 957, 27 L.Ed.2d 265, 91 S.Ct. 355 (1970); *Davis v. Firment*, 408 F.2d 1085 (CA 5, 1969).

In our case there was no evidence that the regulation was designed to control freedom of speech. The school authorities had a right to enforce a haircut code that was conducive to the fulfillment of their responsibility to educate the students. There is no showing in this case that the school authorities did not act reasonably and with consideration for the rights of petitioner and other students. The code did not infringe upon petitioner's rights under the due process clause of the Constitution.

CONCLUSION

The hair-cut code in this case does not directly and sharply implicate basic constitutional values. It is simply a tool of the teaching profession which is used to

maintain the discipline necessary to accomplish the aim of educating children. It is a matter of state and local concern. No substantial Federal question is involved.

These respondents request that the Petition be denied.

Respectfully submitted,
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